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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/884,146	06/27/1997	DOUGLAS P. MARQUIS		5911

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 04/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

08/884146

Applicant(s)

MARQUIS

Examiner

S. WEINSTEIN

Group Art Unit

1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☒ Responsive to communication(s) filed on 11/27/02
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 6-9 is/are pending in the application.
- ☐ Of the above claim(s) is/are withdrawn from consideration.
- ☐ Claim(s) is/are allowed.
- ☒ Claim(s) 6-9 is/are rejected.
- ☐ Claim(s) is/are objected to.
- ☐ Claim(s) are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
  - ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's admission of the prior art as further evidenced by Tenner et al, further in view of Esty, Melitta, Kramer, Yuen, Hain, Plakas, Brumley, Fear, Jensen ('273), Wolf and Clement.

In regard to claim 1, as evidenced by applicant's admission of the prior art found on pages 1 and 2 of applicant's specification and further evidenced by Tenner et al, it was conventional in the art to provide a bag for use as a proportioning bag for use in food operations wherein a bulk food supply would be divided into portions of smaller size, individual portions would be located in the bags and the bags would be closed for use at a later date wherein the bag is defined by exposed sidewalls and wherein the bag is provided with printing on at least one side wall; wherein the printing comprises a plurality of separate printed blocks positioned closely adjacent to each other (e.g., Figure 1 of Tenner et al) and wherein the printing comprises a day of the week. See in this regard pages 1 and 2 of applicant's specification wherein it is disclosed that the prior art either marked the bags with the day of the week representing the filling date or "use by" date, applied a printed and color coded label to the bag wherein the label was selected from a group of labels having the proper day of the week printed thereon, or applied printing directly to the bag which printing comprised a day of the week and was colored coated (page 2, para. 1 of applicant's specification and Tenner et al). Applicant's admission of the prior art further states that the

states that the label was an improvement over the marking pen because marking pens smudged or erased and the direct printed bag such as Tenner et al. was an improvement over the adhesive label process since applying the label took time. Claim 1 differs from applicant's admission of the prior art as further evidenced by Tenner et al in that a reference to each of the seven days of the week are printed on the bag with each day being printed within a separate block, rather than having one day of the week as shown in Tenner et al. As disclosed, applicant's reasons for printing several days on the storage bag, or all seven days of the week, printed on the storage bag is so that it is not necessary to hold in inventory separate sets of bags with each dedicated to one day of the week. Applicant is not the first to provide a receptacle with indicia which allows one various choices to select various information or messages to be retained or communicated. The art is replete with examples wherein various receptacles for various uses are provided with indicia, mainly printed indicia, wherein a person has a varied selection of messages or communications or data that can be selected. These indicia include the names of the days of the week, the dates of the month, names of the month, etc. For example, Esty discloses applying indicia to a receptacle by printing directly on a can (page 2, col. 1, para. 2) wherein the consumer is provided with a plurality of indicia representing days of the week, dates in a month, etc so that the consumer can select the opening date of the receptacle and retain that information (see e.g., figures 1 and 2 and col. 1,

para. 4). Melitta discloses a food storage container for a freezer wherein the container has associated with it markings that name the months of the year so that the consumer can indicate the storage month by selecting the appropriate indicia. Note that Melitta does not teach providing twelve different sets of containers with each container set only having indicia representing one month but rather one set of containers with indicia representing all twelve months so that the consumer can select the appropriate month. This is, of course, applicant's objective as well; i.e., to provide one receptacle with a plurality of indicia choices rather than a series of different sets of receptacles with each set having only indicia (i.e., no choice). Kramer is another food storage receptacle which gives one the ability to indicate when the food was placed in the receptacle for storage (col. 1, para. 3) by providing the receptacle with a plurality of indicia, including printed indicia (col. 3, para. 2) indicating a plurality of months, dates and days of the week (e.g., Figures 1 and 5). Yuen is a further example of storage containers which are provided with a plurality of indicia so that one can select the date including the month when the product is stored. The other references applied are applied as further evidence of providing a plurality of alternative indicia on the same receptacle to allow one the choice to convey or retain different information or messages-whether it is the degree of freshness of cheese from the time of packaging (Hain fig. 1), to the indication of the strength and sweetness of coffee in a cup (Plakas - fig. 1 and Wolf - fig. 1), to the degree

of doneness of a hamburger and what condiments are with it (Brumley - Figure 1); to the type of soft drink (Fear - Fig. 1); and finally to the type of food and condiments (Jensen '273 - fig. 7). It is noted that none of these references applied provide different sets of receptacles having only one indicia so that one would have a set of cups with the indicia "coffee - light - with sugar" and another set of cups with the indicia "coffee-dark, -without sugar". Rather, like applicant, all of the secondary references provide receptacles with a plurality of indicia choices. Thus, applicant's objective of providing a receptacle with indicia choices so that only one set of receptacles is necessary rather than a series of different sets is not the exception but the rule in the art and is fully documented by the art taken as a whole. To modify applicant's admission of the prior art as further evidenced by Tenner et al and provide the printed indicia storage bag of applicants admission and Tenner et al with each of the seven days of the week for its art recognized and applicant's intended function of providing one set of bags instead of one set of bags for each choice (i.e., day of the week) would have been unequivocally obvious in view of the art taken as a whole. The number of secondary references are thought to be necessary to provide evidence to emphasize the conventionality of receptacles provided with a plurality of indicia choices and their wide range of application and the information they provide. See *In re Gorman* 18 USPQ 2<sup>nd</sup> series 1885 wherein the Court referring to an earlier case noted that "where teachings relied upon to show

obviousness were repeated in a number of references, the conclusion of obviousness was strengthened". (Kansas Jack. Inc. v. Kuhn 719 F.2d 1144, 11409; 219 USPQ 857, 860 (Fed. Cir. 1983). It is noted that claim 1 further recites that each day is printed in a different color which presumably facilitates selection of the right day of the week by providing a color code (for people who cannot read?). However, as noted above, applicant's admission of the prior art acknowledges that it was conventional to color code the prior art labels so that each day of the week was a different color and Tenner et al prints on their bag, each day of the week in a different color (col. 3, para. 2). In view of these facts, taken with the additional fact that applicant admits this color coding of days of the week is a conventional practice (page 4, para. 2), to further modify applicant's admission of the prior art as evidenced by the Tenner et al bag and print each day in a different color for its art recognized and applicant's intended function of color coding would therefore have been obvious. Finally, Clement, although disclosing a label for a medical procedure, nevertheless can be relied on as further evidence of the concept of providing indicia which offers one a selection, for example, by using a marker to mark off one of a plurality of possibilities (col. 10, para. 2). Although not part of the rejection it is interesting to note that although the claims do not recite how one is to indicate on the bag the particular printed indicia day, as disclosed, appellant in the specification suggests the use of the marker which, although he admits is conventional, is subject to smudging

or erasing. In regard to claim 7, Tenner et al teaches it would have been obvious to provide the indicia in at least two languages (e.g., col. 3, para. 1 ... "in both English and Spanish").

Finally, applicant is referred to the Board of Appeals Decision mailed 9/30/02, paper no. 12 which affirmed the previous rejection wherein the Board made note of *In re Montgomery*, 214 F.2d 136, 139, 102 USPQ 248, 250 (CCPA 1954) that stated if the sole distinction between a reference and the claimed invention is printed matter, there being no relation of printed matter to conventional structure, the claim is not patentable.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 6, and further in view of Jensen ('780).

Claims 8 and 9 differ from the combination of references in the recitation that the bags are connected in a saddle arrangement supported on a saddle wherein the bags are connected by perforations so that the bags may be torn away one-at-a-time. As evidenced by Jensen ('780), it is well established in the art to provide bags in a paired, saddle arrangement with perforations therebetween so that the bags may be torn away one-at-a-time. See e.g., figure 6 in this regard. This conventional dispensing arrangement is thus well established and Jensen ('780) discloses it has been used at deli counters (to load food into the bags), checkout registers, etc. To modify the combination and provide the printed bags in this conventional arrangement for its art recognized

(i.e., ease of dispensing) and appellants intended function for dispensing would therefore have been obvious.

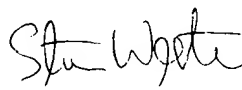
Finally, applicant appears to have filed a copy of the specification with the CPA papers which copy apparently is a duplicate. It has been marked as such and placed in the file.

Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is 703-308-0650. The examiner can generally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-0661.

S. Weinstein/mn  
April 10, 2003



STEVE WEINSTEIN  
PRIMARY EXAMINER

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